IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

Crl.MC.No. 648 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.4352/2006 Dated 07/12/2006 OF THE HIGH COURT OF KERALA

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PETITIONER: REVISION PETITIONER

M.T.SUKUMARAN, S/O.KUNHATHAN VAIDYAR,
NELLIKKATTUTHODIKA HOUSE,
NADUVATH P.O, WANDOOR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: RESPONDENTS

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1. K.MOHANDAS, S/O.SANKARAN,
KALAPARAMBIL HOUSE, KALLEMPADAM,
NILAMBUR.P.O, MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY ADV. SRI.ABRAHAM SAMSON
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.648 of 2007

Dated this the 9th day of March 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. He now faces the sentence of imprisonment till rising of court . There is also a further direction under Section 357(3) Cr.P.C that the petitioner must deposit the cheque amount of Rs.35,000/- as compensation and in default to undergo S.I for a period of one month. The petitioner was granted time of three months to deposit the amount.

2. The petitioner has come to this court along with the respondent/complainant with this petition under Section 482 Cr.P.C to report that the matter has been compounded between the parties and in these circumstances, the composition may be accepted and the petitioner may be saved of the obligation to undergo imprisonment till rising of court and to deposit the amount of Rs.35,000/-.

3. It is true that this court, in Sabu George vs. Home Secretary [W.P.C.No.34540/06, Crl.M.A.No.8626/06 in [Crl.R.P.No.7/04 and Crl.M.C.No.259/07 dated 14/02/2007] has taken the view that a post revision composition can, in an appropriate case, be accepted to quash the sentence imposed. But that was a case where there was a substantive sentence of incarceration. That decision does not lay down an invariable principle that every such composition has got to be accepted. This court was persuaded to resort to the extraordinary inherent jurisdiction considering the harsh and insensitive consequence of the accused being compelled to undergo substantive sentence of imprisonment in prison even when composition was effected of the compoundable offence under Section 320(1) Cr.P.C. That cannot be justification for mindless and routine invocation of such powers under Section 482 Cr.P.C.

4. The learned counsel for the petitioner/accused asserts and the learned counsel for the respondent/complainant concedes that the entire cheque amount of Rs.35,000/- has, now been, paid to the complainant and received by him. The petitioner is actually directed " to deposit" the amount and not " to pay" the amount. Because of this direction,

the learned Magistrate may not accept payment as sufficient discharge of the liability under Section 357(3) Cr.P.C and may insist that the petitioner may have to undergo the default sentence. Atleast it may be clarified that the payment admittedly made must be reckoned as sufficient compliance of the direction "to deposit" the compensation amount. In the facts and circumstances of this case, I am satisfied that the prayer can be accepted to that limited extent.

4. In the result, this Criminal Miscellaneous Case is allowed in part. The petitioner and the respondent shall be entitled to appear before the learned Magistrate and satisfy the learned Magistrate that the compensation amount has already been paid by the petitioner/accused to the respondent/complainant. If the learned Magistrate is so satisfied, it shall not be necessary for the learned Magistrate to insist on deposit of the amount again before the learned Magistrate and such payment shall be reckoned as sufficient compliance in this case of the direction to deposit the amount. Default sentence shall not be executed if the learned Magistrate is so satisfied.

5. It is submitted that an amount of Rs.5,000/- is in deposit before the learned Magistrate, the same having been deposited by the petitioner herein. The parties agree that the said amount can now be released to the petitioner. They can make the request before the learned Magistrate and if satisfied of the genuineness of that request, the said request shall also be accepted by the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006